

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

PATRICK J. ENG, individually and)	
PATRICK J. ENG, MATTHEW B.)	
WOODS, DOUGLAS F. PUGH, THAD)	
MULHOLLAND, and JONATHAN D.)	
MCQUILKIN, Partners, d/b/a/ ENG AND)	Case No. 08-cv-04103-C-NKL
WOODS,)	
)	
Plaintiffs,)	
)	
v.)	
)	
CUMMINGS, MCCLOREY, DAVIS AND)	
ACHO, P.L.C.)	
Defendant.		

ORDER

Plaintiffs Patrick J. Eng and Patrick J. Eng, Matthew B. Woods, Douglas F. Pugh, Thad Mulholland, and Jonathan D. McQuilkin, Partners, d/b/a/ Eng and Woods (“Eng and Woods”) sued Defendant Cummings, McClorey, Davis and Acho, P.L.C. (“Cummings”), seeking a declaratory judgment that Cummings is not entitled to a referral fee on Eng and Woods’ attorneys’ fees awarded as part of a settlement in a wrongful death action. Cummings asserts as an affirmative defense that Eng and Woods failed to state a cause of action upon which relief can be granted. Cummings also asserts in a counter-claim that it is entitled to the referral fee pursuant to an agreement with Eng and Woods. Pending before the Court is Cummings’ Motion to Dismiss or, in the alternative, to Transfer to the United

States District Court Eastern District of Michigan [Doc. # 9]. The Court denies the motion.

I. Factual Background

Cummings is a law firm located in Livonia, Michigan. Eng and Woods is a law firm located in Columbia, Missouri. On November 18, 2006, Eng and Woods entered into separate contingent fee contracts with Mike Richina (“Richina”) and Khemya MitRahina (“MitRahina”) to prosecute claims in an action for the wrongful death of their mother. On December 20, 2007, the Circuit Court of Greene County, Missouri, approved a settlement of the wrongful death claims and ordered payment of \$374,000 in attorney fees to Eng and Woods. Cummings filed suit in the United States District Court for the Eastern District of Michigan, claiming that it referred Plaintiffs to Richina and MitRahina; therefore, it is entitled to one-third of Eng and Woods’ attorney fees. On May 13, 2008, Eng and Woods filed suit in the United States District Court for the Western District of Missouri, seeking a declaratory judgment stating that Eng and Woods does not owe Cummings a referral fee. On June 17, 2008, Cummings filed this Motion to Dismiss, or, in the alternative, to Transfer to the Eastern District of Michigan. On June 30, 2008, the Eastern District of Michigan dismissed Cummings’ lawsuit against Eng and Woods for lack of personal jurisdiction.

II. Discussion

Cummings relies upon the first-filed rule in support of its motion. According to the first-filed rule, “in cases of concurrent jurisdiction, ‘the first court in which jurisdiction attaches has priority to consider the case.’” *U.S. Fire Ins. Co. v. Goodyear Tire & Rubber Co.*, 920 F.2d 487, 488 (8th Cir. 1990) (*citing Orthmann v. Apple River Campground, Inc.*,

765 F.2d 119, 121 (8th Cir. 1985)). Cummings filed this motion when both the Eastern District of Michigan and the Western District of Missouri had cases concurrently before them. However, the Eastern District of Michigan dismissed the first lawsuit due to lack of personal jurisdiction. *See Cummings v. Patrick Eng*, No. 08 CV 11604, 2008 U.S. Dist. LEXIS 50491, at *22-23 (E.D. Mich. June 30, 2008). Consequently, there is no “concurrent jurisdiction” and the first-filed rule does not apply.

IV. Conclusion

Accordingly, it is hereby

ORDERED that Defendant Cummings’ Motion to Dismiss or, in the alternative to Transfer to the United States District Court Eastern District of Michigan [Doc. # 9] is DENIED.

s/ Nanette K. Laughrey
NANETTE K. LAUGHREY
United States District Judge

Dated: July 28, 2008
Jefferson City, Missouri